

ORDER NO. 1474

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton;
Tony Hammond; and
Robert G. Taub

Competitive Product Prices
Express Mail, Priority Mail & First-Class
Package Service
Express Mail, Priority Mail & First-Class
Package Service Contract 1

Docket No. MC2012-46

Competitive Product Prices
Express Mail, Priority Mail & First-Class
Package Service Contract 1 (MC2012-46)
Negotiated Service Agreement

Docket No. CP2012-55

ORDER ADDING EXPRESS MAIL, PRIORITY MAIL & FIRST-CLASS PACKAGE
SERVICE CONTRACT 1 TO THE COMPETITIVE PRODUCT LIST

(September 21, 2012)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Express Mail, Priority Mail & First-Class Package Service Contract 1 to the competitive product list.¹ For the reasons discussed below, the Commission approves the Request.

¹ Request of the United States Postal Service to Add Express Mail, Priority Mail & First-Class Package Service Contract 1 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, August 30, 2012 (Request).

II. BACKGROUND

On August 30, 2012, in accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, the Postal Service filed the Request, along with supporting documents. In the Request, the Postal Service asserts that Express Mail, Priority Mail & First-Class Package Service Contract 1 is a competitive product, and one that is “not of general applicability” within the meaning of 39 U.S.C. 3632(b)(3). Request at 1. The Postal Service further asserts that the prices and classification underlying the contract are supported by Governors’ Decision No. 11-6.² Among the supporting documents, the Postal Service included a statement supporting the Request, a certification of compliance with 39 U.S.C. 3633(a), a copy of Governors’ Decision No. 11-6, and a contract related to the proposed new product. In addition, the Postal Service submitted an application for non-public treatment of materials to maintain redacted portions of the contract, customer-identifying information, and related financial information filed under seal. *Id.*, Attachment F.³

On August 31, 2012, the Commission issued an order establishing the two dockets, appointing a Public Representative, and providing interested persons with an opportunity to comment.⁴ A Chairman’s information request was issued on September 14, 2012.⁵ The Postal Service filed a response to CHIR No. 1 and filed an errata to its

² Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, March 22, 2011 (Governors’ Decision No. 11-6).

³ In its application for non-public treatment of materials, the Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. Request, *Id.* at 7. The Commission has consistently denied similar requests. See, e.g., Docket Nos. MC2011-1 and CP2011-2, Order No. 563, Order Approving Express Mail Contract 9 Negotiated Service Agreement at 6-7, October 20, 2010.

⁴ Order No. 1458, Notice and Order Concerning Addition of Express Mail, Priority Mail & First-Class Package Service Contract 1 to the Competitive Product List, August 31, 2012.

⁵ Chairman’s Information Request No. 1, September 14, 2012 (CHIR No. 1).

supporting spreadsheets on September 20, 2012.⁶ Along with its Response to CHIR No. 1, the Postal Service filed a motion for late acceptance of its Response to CHIR No. 1.⁷

III. COMMENTS

The Public Representative filed comments on September 10, 2012.⁸ No other interested person submitted comments. The Public Representative states that she has reviewed the Request, supporting documentation, and supporting financial models. PR Comments at 2.

She concludes that Express Mail, Priority Mail & First-Class Package Service Contract 1 satisfies the criteria of 39 U.S.C. 3633(a). *Id.* However, she expresses a concern that the contract contains an additional discount that is not explained, and suggests that the Commission require the Postal Service to explain all adjustments to costs and revenues in the model(s). *Id.*

IV. COMMISSION ANALYSIS

The Commission has reviewed the Request, the instant contract, the supporting data filed under seal, the Response to CHIR No. 1, and the Public Representative's comments.

Product list requirements. The Commission's statutory responsibilities when evaluating the Request entail assigning Express Mail, Priority Mail & First-Class Package Service Contract 1 to either the market dominant or the competitive product

⁶ Responses of United States Postal Service to Chairman's Information Request No. 1, September 20, 2012 (Response to CHIR No. 1); Notice of United States Postal Service of Filing Revised Spreadsheet Under Seal [Errata], September 20, 2012.

⁷ Motion of United States Postal Service for Late Acceptance of Responses to Chairman's Information Request No. 1, September 20, 2012 (Motion for Late Acceptance). That Motion for Late Acceptance is granted.

⁸ Public Representative Comments, September 10, 2012 (PR Comments).

list. See 39 U.S.C. 3642(b)(1); 39 CFR part 3020.30 *et seq.* In addition, the Commission must consider the availability and use of private sector enterprises engaged in delivering the product, the views of those who use the product, and the likely impact on small business concerns. See 39 U.S.C. 3642(b)(3); 39 CFR 3020.32(f), (g), and (h).

The Postal Service asserts that it provides Express Mail, Priority Mail, and First-Class Package service in a highly competitive market, that other shippers who provide similar services constrain its bargaining position, and that it therefore can neither raise prices nor decrease service, quality, or output without risking the loss of business to competitors. Request, Attachment D at 2. The Postal Service affirms that the contract partner supports the Request, that expedited shipping is widely available from private firms, and that it is unaware of any small business concerns that could offer comparable services to the contract partner. *Id.* at 3.

Having considered the relevant statutory and regulatory requirements and the Postal Service's supporting justification, the Commission finds that the Express Mail, Priority Mail & First-Class Package Service Contract 1 product is appropriately classified as competitive and adds it to the competitive product list.

Cost considerations. As a competitive product, Express Mail, Priority Mail & First-Class Package Service Contract 1 must satisfy 39 U.S.C. 3633(a), including, in particular, the requirement that it cover its attributable costs. See *also* 39 CFR 3015.5. As part of its Request, the Postal Service submitted a certified statement, along with supporting revenue and cost data on the instant contract. The Commission found that it needed additional information to fully understand the contract. For this reason, the Commission issued CHIR No. 1 to better understand the terms of the contract and the additional discount raised by the Public Representative.

The Postal Service's Request along with its Response to CHIR No. 1 demonstrate that the instant contract satisfies the statutory and regulatory requirements. The Public Representative concurs. PR Comments at 2. As discussed above, the

Public Representative had concerns with the initial information submitted by the Postal Service in this docket in support of its filing. *Id.* The Postal Service's Response to CHIR No. 1 appears to satisfy those concerns. The Commission finds that Express Mail, Priority Mail & First-Class Package Service Contract 1 complies with the provisions applicable to rates for competitive products.

Other considerations. By its terms, the contract becomes effective on the day on which the Commission issues all necessary regulatory approvals and expires 3 years later. Request, Attachment B at 2.

If the instant contract is terminated prior to the scheduled expiration date, the Postal Service shall promptly notify the Commission.

Within 30 days after the contract terminates, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by either rate category or weight and zone.

In conclusion, the Commission approves Express Mail, Priority Mail & First-Class Package Service Contract 1 as a new product. The revision to the competitive product list appears below the signature of this Order and is effective immediately.

V. ORDERING PARAGRAPHS

It is ordered:

1. Express Mail, Priority Mail & First-Class Package Service Contract 1 (MC2012-46 and CP2012-55) is added to the competitive product list as a new product under Negotiated Service Agreements, Domestic. The revision to the competitive product list appears below the signature of this Order and is effective immediately.
2. The Postal Service shall notify the Commission if the instant contract ends prior to the scheduled expiration date as discussed in this Order.

3. Within 30 days after the contract terminates, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by either rate category or weight and zone.
4. The Secretary shall arrange for publication in the *Federal Register* of an updated product list reflecting the change made in this Order.

By the Commission.

Shoshana M. Grove
Secretary

CHANGE IN MAIL CLASSIFICATION SCHEDULE
CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified in Appendix A to 39 CFR part 3020, subpart A—Mail Classification Schedule. These changes reflect the Commission's Order in Docket Nos. MC2012-46 and CP2012-55. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

Part B—Competitive Products

2000 Competitive Product List

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Negotiated Service Agreements

Domestic

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Express Mail, Priority Mail & First-Class Package Service Contract 1

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